

1 IN THE UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF GEORGIA
3 (MACON DIVISION)

4 CERTUS BANK, N.A., as successor)
5 by assignment to ATLANTIC)
6 SOUTHERN BANK,)

7 Plaintiff,)

8 vs.)

9 GENE DUNWODY, JR., GENE DUNWODY,)
10 SR., JACK W. JENKINS, W. TONY)
11 LONG, and L. ROBERT LOVETT,)

12 Defendants.)

CIVIL ACTION FILE

NO. 5:14-cv-00069-CAR

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DEPOSITION OF EUGENE C. DUNWODY
OCTOBER 30, 2014
11:45 A.M.



CERTIFIED COURT REPORTERS

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(MACON DIVISION)

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SOUTHERN BANK,)

Plaintiff,)

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SR., JACK W. JENKINS, W. TONY)
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DEPOSITION OF EUGENE C. DUNWODY
OCTOBER 30, 2014
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1 APPEARANCES OF COUNSEL

2 On behalf of the Plaintiff:

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12 * * *

13 BY MR. SMITH:

14 Q We're on the record in the case of
15 CertusBank NA, a successor by assignment to Atlantic
16 Southern Bank versus Gene Dunwody, Jr., Gene
17 Dunwody, Sr., Jack W. Jenkins, W. Tony Long and L.
18 Robert Lovett.

19 This is the deposition of Gene Dunwody,
20 Sr. This deposition is being taken by notice and
21 agreement of counsel and the parties for purposes of
22 discovery and all other purposes permitted by the
23 Federal Rules of Civil Procedure.

24 Present in the room is Mr. Gene Dunwody,
25 Sr., Mr. Robert Lovett, Mr. Gene Dunwody, Jr. and

1 counsel for the defendants, Mr. Wes Boyer.

2 At this time, can you please swear in the
3 witness.

4 EUGENE C. DUNWODY,
5 having been first duly sworn, was deposed and testified as
6 follows:

7 EXAMINATION

8 BY MR. SMITH:

9 Q Mr. Dunwody, have you been deposed before?

10 A Not in this case.

11 Q Okay. But you've had a deposition taken
12 of you before?

13 A Yes.

14 Q Okay. I'll try to keep some of these
15 instructions brief. You should answer all the
16 questions I ask the same as if you were in court
17 because you're under oath.

18 If you don't understand any of my
19 questions, just let me know. I'm happy to repeat or
20 rephrase them. We can also ask the court reporter
21 to read them back to you, if necessary.

22 If you do answer a question, I'm going to
23 assume that you've heard it, that you've understood
24 it and that you've just given me the best
25 recollection of what you know.

1 And because the court reporter is taking
2 all of this down, if you could respond verbally and
3 not with a nod of the head or a grunt or an uh-huh
4 or something like that, that would be most helpful.

5 If you need to take a break at any time,
6 water break or use the restroom or something, that's
7 not a problem. Just let me know.

8 I would only ask that before we take a
9 break you finish answering any question that might
10 be pending.

11 Do you have any questions before we begin?

12 A Not at this time.

13 Q Could you please state and spell your name
14 for the record?

15 A Eugene Cox Dunwody, E-U-G-E-N-E, C-O-X,
16 D-U-N-W-O-D-Y.

17 Q And simply because we have another party
18 in this case who is also a Gene Dunwody, you are
19 Gene Dunwody, Sr., correct?

20 A No, I am not. I am Eugene Cox Dunwody.
21 He's Eugene Cox Dunwody, Jr. That should be enough
22 to distinguish.

23 Q I understand. What is your current home
24 address?

25 A 330 Wesleyan Drive, Macon, Georgia 31210.

1 Q Are you currently employed?

2 A I am.

3 Q And what is your occupation?

4 A I'm an architect with Dunwody/Bealand
5 Architects.

6 Q And how long have you been an architect
7 for?

8 A Since 19 -- I was registered in '63 but
9 I've been in architectural firm since 1959.

10 Q Are you on any prescription medications or
11 drugs right now that would impair your ability to
12 testify?

13 I don't need to know what drugs.

14 A No. I take Zocor.

15 Q Okay. I don't -- yeah, like I said, I
16 don't need to know what the pills are. I just -- I
17 just need to know you're not on any drugs or alcohol
18 or anything like that that would impair your ability
19 to testify. That's all.

20 Do you have any other lawsuits pending
21 against you, other than this one?

22 A Probably. I -- I don't know. I mean,
23 that's just an honest answer. I'm getting all these
24 things in the mail.

25 I can't separate one project from another.

1 This is probably the only one right now.

2 Q This is the only one you -- to your
3 recollection, you're aware of right now?

4 A Right.

5 Q Were you a member of Capricorn Center,
6 LLC?

7 A I was.

8 Q What was the purpose of that entity? What
9 type of business was it in?

10 A It was to develop the property into a
11 multi-use facility and for profit.

12 MR. SMITH: May I see those other
13 exhibits?

14 THE COURT REPORTER: Sure.

15 BY MR. SMITH:

16 Q Have you ever heard of an entity called
17 615 5th Street, LLC?

18 A Not offhand. I will tell you that my
19 mental faculties are good, other than memory, which
20 tends to come and go and fade.

21 And I probably wouldn't be able to tell
22 you his name, you know, this afternoon.

23 Q I understand.

24 Did Capricorn Center, LLC borrow money
25 from Atlantic Southern Bank?

1 A I'm sure we did.

2 Q As you sit here today, do you know if that
3 money was ever paid back in full?

4 A It was not paid back in full.

5 Q Did you personally guarantee the loans
6 that were made by Atlantic Southern Bank to
7 Capricorn Center, LLC?

8 A I signed a lot of papers and that could
9 very well have been one.

10 (Whereupon, previously marked Exhibit 8
11 entered.)

12 BY MR. SMITH:

13 Q Okay. If you could turn to Exhibit 8
14 that's in the binder in front of you, please.

15 A Those were my initials at the bottom.

16 Q Okay. This is a Guaranty dated
17 April 16th, 2010 that you signed in favor of
18 Atlantic Southern Bank, correct?

19 A Yes.

20 Q Okay. If you look at Page 3, is that your
21 signature?

22 A That is my signature.

23 Q And are those your initials on each page?

24 A Those are my initials.

25 Q Is this a true and correct copy of the

1 document that you signed, as far as you know?

2 A So far as I know.

3 (Whereupon, previously marked Exhibit 16
4 entered.)

5 BY MR. SMITH:

6 Q Okay. If you could turn to Exhibit 16,
7 please.

8 A The answers would be the same if the
9 questions are.

10 Q Well, I have to go through the questions
11 very quickly.

12 This is a Guaranty dated April 28, 2011
13 that you signed in favor of Atlantic Southern Bank,
14 correct?

15 A Yes.

16 Q Is this a true and correct copy of the
17 document that you signed?

18 A Yes.

19 (Whereupon, previously marked Exhibit 21
20 entered.)

21 BY MR. SMITH:

22 Q Okay. If you could turn to Exhibit 21,
23 please.

24 This is a letter dated August 7th, 2012
25 that was sent to yourself and various other parties,

1 correct?

2 A Correct.

3 Q The address that's designated for you is
4 300 Mulberry Street, 6 -- Suite 604.

5 Is that your architect firm?

6 A That's my firm address.

7 Q Okay. Do you recall receiving a copy of
8 this letter?

9 A I used to get these in the mailbox both --
10 I pick up the mail every morning, and I get them
11 both certified and I had to sign for stacks of them,
12 plus not certified.

13 And so I'm sure that this was one of them
14 that came through that means.

15 Q Okay. As far as you know, is this a
16 correct copy of the letter that was sent?

17 A As far as I know.

18 (Whereupon, previously marked Exhibit 22
19 entered.)

20 BY MR. SMITH:

21 Q If you could look at Exhibit 22, please.

22 This is a letter dated August 17th,
23 2012, similarly addressed to you and other parties,
24 and it was addressed to you at the 300 Mulberry
25 Street address; is that correct?

1 A That's correct.

2 Q Do you recall receiving a copy of this
3 letter?

4 A Yes.

5 Q Is this a true and correct copy of the
6 letter that you received?

7 A Yes.

8 Q Do you have any idea of how much money is
9 still outstanding under the loans that Atlantic
10 Southern made to Capricorn Center?

11 A I have no idea. I thought this had all
12 been settled.

13 Q Are you aware of any written Settlement
14 Agreement?

15 A When the court -- court settlement on
16 this.

17 THE COURT REPORTER: I'm sorry. I didn't
18 hear you.

19 MR. BOYER: I think he's referring to the
20 Court decision.

21 BY MR. SMITH:

22 Q Oh, are you referring to the foreclosure
23 confirmation case that was --

24 A I guess, yeah, that was -- I knew that
25 that was some sort of legal ruling and I thought we

1 were through.

2 Q Okay. But aside from that case, are you
3 aware of any written Settlement Agreement that --
4 did you sign any written Settlement Agreement with
5 regard to this?

6 A If it's not in your book, I guess I
7 haven't.

8 (Whereupon, previously marked Exhibit 19
9 entered.)

10 BY MR. SMITH:

11 Q Okay. If you could turn to Exhibit 19.
12 I'm going to represent to you, Mr. Dunwody, that
13 this is a copy of the Complaint that has been filed
14 in this case.

15 If you could turn to Page 6, Paragraph 43.
16 It's asserting that there are certain amounts that
17 are outstanding under a particular note that was
18 signed by Capricorn Center in favor of Atlantic
19 Southern.

20 Do you have any reason to believe that the
21 amounts that are set forth in this paragraph are
22 incorrect as outstanding on the date of
23 February 18th, 2014?

24 A I have no reason to challenge or to
25 accept.

1 Q Okay. If you could turn to Page 10, I
2 have the same question for Paragraph 73 as to what's
3 defined as Note 2 in this Complaint, which I'll
4 represent to you was a \$1.2 million note.

5 Do you have any reason to believe that the
6 amounts that are asserted as outstanding as of
7 February 18th, 2014 are incorrect as to that note?

8 A I do not.

9 MR. SMITH: I have no further questions.

10 MR. BOYER: I have none.

11 MR. SMITH: The deposition of Mr. --

12 THE WITNESS: Can I ask a question?

13 MR. SMITH: Sure.

14 THE WITNESS: Tell me why we're going
15 through this again. Didn't we go through this
16 once before?

17 MR. SMITH: Well, why don't we have a
18 discussion about that off the record. At this
19 time we're going to conclude the deposition.

20 I'm happy to talk to you about that.

21 (Deposition Concluded)

22

23

24

25

C E R T I F I C A T E

- - - - -

STATE OF GEORGIA:

FULTON COUNTY:

I hereby certify that the foregoing transcript was taken down as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages 1 through 12 represent a true and correct transcript of the evidence given upon said hearing, and I further certify that I am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, nor am I financially interested in the action.

This the 1st day of December, 2014.

KELLY A. EMERY, CCR-B-941

<hr/> <p style="text-align: center;">1</p> <hr/> <p>16 8:3,6 16th 7:17 17th 9:22 19 5:8 1959 5:9</p>	<hr/> <p style="text-align: center;">7</p> <hr/> <p>7th 8:24</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>8 7:10,13</p> <hr/> <p style="text-align: center;">A</p> <hr/>	<p>binder 7:14 borrow 6:24 bottom 7:15 Boyer 2:8,9 3:1 10:19 break 4:5,6,9 business 6:9</p> <hr/> <p style="text-align: center;">C</p> <hr/>	<p>designated 9:3 develop 6:10 discovery 2:22 distinguish 4:22 document 8:1,17 Drive 4:25 drugs 5:11,13,17 duly 3:5 Dunwody 2:16,17, 19,24,25 3:4,9 4:15, 18,19,20,21 Dunwody/bealand 5:4</p>	<hr/> <p style="text-align: center;">G</p> <hr/> <p>Gene 2:16,19,24,25 4:18,19 Georgia 2:5,10 4:25 good 6:19 Gordon 2:3 gordonsa@gtlaw.com 2:6 Greenberg 2:3 grunt 4:3 guarantee 7:5 Guaranty 7:16 8:12 guess 10:24</p>
<hr/> <p style="text-align: center;">2</p> <hr/> <p>2010 7:17 2011 8:12 2012 8:24 9:23 21 8:19,22 22 9:18,21 2500 2:5 28 8:12</p>	<p>ability 5:11,18 address 4:24 9:3,6, 25 addressed 9:23,24 afternoon 6:22 agreement 2:21 10:14 alcohol 5:17 answering 4:9 answers 8:8 APPEARANCES 2:1 April 7:17 8:12 architect 5:4,6 9:5 Architects 5:5 architectural 5:9 assignment 2:15 assume 3:23 Atlanta 2:5 Atlantic 2:15 6:25 7:6,18 8:13 10:9 August 8:24 9:22 Avenue 2:9 aware 6:3 10:13</p>	<p>C-o-x 4:15 called 6:16 Capricorn 6:5,24 7:7 10:10 case 2:14 3:10 4:18 10:23 Center 6:5,24 7:7 10:10 certified 9:11,12 Certusbank 2:15 Civil 2:23 confirmation 10:23 copy 7:25 8:16 9:7, 16 10:2,5 correct 4:19 7:18,25 8:14,16 9:1,2,16,25 10:1,5 Cotton 2:9 counsel 2:1,21 3:1 court 3:16,20 4:1 6:14 10:15,17,20 Cox 4:15,20,21 current 4:23</p>	<hr/> <p style="text-align: center;">E</p> <hr/> <p>E-u-g-e-n-e 4:15 employed 5:1 entered 7:11 8:4,20 9:19 entity 6:8,16 Esq 2:3,8 Eugene 3:4 4:15,20, 21 EXAMINATION 3:7 Exhibit 7:10,13 8:3, 6,19,22 9:18,21 exhibits 6:13</p>	<hr/> <p style="text-align: center;">H</p> <hr/> <p>happy 3:19 head 4:3 hear 10:18 heard 3:23 6:16 helpful 4:4 home 4:23 honest 5:23</p>
<hr/> <p style="text-align: center;">3</p> <hr/> <p>3 7:20 300 9:4,24 30305 2:5 31201 2:10 31210 4:25 330 4:25</p>	<p>back 3:21 7:3,4 Bank 2:16 6:25 7:6, 18 8:13 begin 4:11 behalf 2:2,7</p>	<hr/> <p style="text-align: center;">D</p> <hr/> <p>D-u-n-w-o-d-y 4:16 dated 7:16 8:12,24 9:22 decision 10:20 defendants 2:7 3:1 deposed 3:5,9 deposition 2:19,20 3:11</p>	<hr/> <p style="text-align: center;">F</p> <hr/> <p>facility 6:11 faculties 6:19 fade 6:20 favor 7:17 8:13 Federal 2:23 finish 4:9 firm 5:9 9:5,6 Flatau 2:9 foreclosure 10:22 front 7:14 full 7:3,4</p>	<hr/> <p style="text-align: center;">I</p> <hr/> <p>idea 10:8,11 impair 5:11,18 initials 7:15,23,24 instructions 3:15</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>Jack 2:17 Jenkins 2:17 Jr 2:16,25 4:21</p>
<hr/> <p style="text-align: center;">4</p> <hr/> <p>400 2:4 478-742-6481 2:11</p>	<hr/> <p style="text-align: center;">B</p> <hr/>		<hr/> <p style="text-align: center;">K</p> <hr/> <p>Katz 2:9 knew 10:24</p>	
<hr/> <p style="text-align: center;">5</p> <hr/> <p>5th 6:17</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6 9:4 604 9:4 615 6:17 63 5:8</p>				

<hr/> L <hr/> lawsuits 5:20 legal 10:25 letter 8:24 9:8,16,22 10:3,6 LLC 6:6,17,24 7:7 loans 7:5 10:9 long 2:17 5:6 lot 7:8 Lovett 2:18,25 <hr/> M <hr/> Macon 2:10 4:25 made 7:6 10:10 mail 5:24 9:10 mailbox 9:9 marked 7:10 8:3,19 9:18 means 9:14 medications 5:10 member 6:5 memory 6:19 mental 6:19 money 6:24 7:3 10:8 morning 9:10 Mulberry 9:4,24 multi-use 6:11 <hr/> N <hr/> NA 2:15 NE 2:4 nod 4:3 notice 2:20 <hr/> O <hr/> oath 3:17 occupation 5:3	offhand 6:18 outstanding 10:9 <hr/> P <hr/> paid 7:3,4 papers 7:8 parties 2:21 8:25 9:23 party 4:17 pending 4:10 5:20 permitted 2:22 personally 7:5 pick 9:10 Piedmont 2:4 pills 5:16 Plaintiff 2:2 prescription 5:10 Present 2:24 previously 7:10 8:3, 19 9:18 problem 4:7 Procedure 2:23 profit 6:11 project 5:25 property 6:10 purpose 6:8 purposes 2:21,22 <hr/> Q <hr/> question 3:22 4:9 questions 3:16,19 4:11 8:9,10 quickly 8:11 <hr/> R <hr/> read 3:21 recall 9:7 10:2 received 10:6 receiving 9:7 10:2	recollection 3:25 6:3 record 4:14 referring 10:19,22 registered 5:8 repeat 3:19 rephrase 3:20 reporter 3:20 4:1 6:14 10:17 respond 4:2 restroom 4:6 Road 2:4 Robert 2:18,25 room 2:24 Rules 2:23 ruling 10:25 <hr/> S <hr/> Sean 2:3 separate 5:25 settled 10:12 settlement 10:13,15 sign 9:11 signature 7:21,22 signed 7:8,17 8:1,13, 17 similarly 9:23 simply 4:17 sit 7:2 SMITH 2:13 3:8 6:12, 15 7:12 8:5,21 9:20 10:21 sort 10:25 Southern 2:16 6:25 7:6,18 8:13 10:10 spell 4:13 Sr 2:17,20,25 4:19 stacks 9:11 state 4:13 Street 6:17 9:4,25	successor 2:15 Suite 2:5 9:4 swear 3:2 sworn 3:5 <hr/> T <hr/> taking 4:1 Terminus 2:4 testified 3:5 testify 5:12,19 things 5:24 thought 10:11,25 time 3:2 4:5,12 today 7:2 Tony 2:17 Traurig 2:3 true 7:25 8:16 10:5 turn 7:13 8:6,22 type 6:9 <hr/> U <hr/> uh-huh 4:3 understand 3:18 6:23 understood 3:23 <hr/> V <hr/> verbally 4:2 versus 2:16 <hr/> W <hr/> water 4:6 Wes 3:1 Wesley 2:8 Wesleyan 4:25 wjboyer_2000@ yahoo.com 2:10 written 10:13	<hr/> Z <hr/> Zocor 5:14
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